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SUBJECT: JUDICIAL SECTOR WORKERS BARRED FROM STRIKING

REF: BOGOTA 1751

SUMMARY

¶1. (SBU) On November 11 the Colombian Supreme Court ruled that a 2008 strike by 38,000 members of the National Association of Judicial Branch Employees (ASONAL JUDICIAL) over remuneration and judicial independence was illegal. The ruling has renewed debate over restrictions on the right of public sector workers to associate, negotiate, and strike (reftel). It also gave the GOC a clear edge in ongoing discussions with ASONAL and other public sector labor groups. ASONAL plans to present the matter before the International Labor Organization (ILO), and possibly the Inter-American Commission of Human Rights (IACHR). End Summary.

GOC INVOKES SPECIAL POWERS TO SQUELCH THE STRIKE

¶2. (SBU) Some 38,000 strikers (90% of the sector) paralyzed the judicial branch for 44 days in September and October 2008. Consequently, according to the Ministry of Interior and Justice (MOIJ), 2,700 suspects had to be released; 121,000 legal proceedings halted; and 25,000 court hearings postponed. On October 7, 2008, the GOC unilaterally decreed \$56.6 million in pay increases over two years (Decrees 3899-3902), claiming that was the most it could afford without endangering state finances. This failed to induce ASONAL to lift the strike, however, and on October 9 President Uribe declared a 90-day national state of emergency, giving the GOC special powers to fire and replace striking workers. The move broke the strike, though ASONAL continued to press its demands and threaten subsequent strikes.

¶3. (SBU) The MOIJ has met with ASONAL on eight occasions in 2009, with little headway according to ASONAL President Fabio Hernandez. The GOC's response has been firm and consistent: "We are in a financial crisis; there is no money." In a September letter to

ASONAL, Minister of Interior and Justice Fabio Valencia Cossio said that while the GOC remained open to dialogue, it had already fulfilled its promises to ASONAL. Hernandez said the "financial crisis" has in part resulted from disproportionate GOC spending on defense and its ongoing war against the FARC.

MOTIVES BEHIND THE 2008 STRIKE

¶ 14. (SBU) Hernandez said ASONAL's top priorities since 2006 have been better remuneration and greater judicial independence. The judicial sector budget, he argued, has lagged behind public demand for justice in pending cases, leaving workers (judges, prosecutors, and court staff) underpaid and overworked and creating bottlenecks in the system. ASONAL has called for full implementation of a new salary scheme pursuant to a 1992 law that has only been partially enforced due to budgetary shortfalls. Full implementation would require an outlay of \$260 million, though ASONAL said it would accept an initial \$99 million in worker bonuses "to kick-start the process."

¶ 15. (SBU) Hernandez told us that the executive branch interferes in judicial processes by cajoling workers with fixed-term contracts into supporting its interests. Most judicial workers have

fixed-term contracts renewable subject to periodic performance reviews, while political appointees dominate the sector's upper echelons. As such, workers who refuse to toe the political line risk losing their jobs when their contracts expire, rendering them susceptible to political pressure. ASONAL has sought indefinite contracts under the formula that "greater job security equals greater independence."

WIDER IMPLICATIONS FOR PUBLIC SECTOR WORKERS

¶ 16. (SBU) The November 11 Supreme Court ruling upheld a lower court decision that the 2008 strike by ASONAL was illegal because judicial workers provide an "essential public service." The ruling cited Article 56 of the Constitution and Article 125 of the Statutory Judicial Administration Law, which "guarantees the right to strike, except in essential public services as defined by law," and states that "the administration of justice is an essential public service," respectively.

¶ 17. (SBU) The ruling represents a clear victory for the GOC with implications for all public sector workers. ASONAL's threat to shut down the judicial branch again was immediately deflated. Colombian law permits employers to summarily fire participants in illegal strikes (reftel), which impinges ASONAL's ability to mobilize workers. Other public sector workers, prominent among them educators and healthcare providers, are also likely to shy away from strike brinkmanship. Minister Valencia Cossio summarized the GOC point of view in a statement carried by leading daily *El Tiempo* on November 11: "The Supreme Court has reiterated what we have said for a year, that justice is an essential public service, and that strikes and collective bargaining are prohibited by law in the public sector."

LABOR CLAIMS THE RULING WAS POLITICAL

¶ 18. (SBU) Supreme Court magistrates refused to hear the case, citing the inherent conflict of interest. Instead, five specially-appointed "assistant judges" (private sector lawyers kept

on reserve for such occasions) took the case. Although the Supreme Court appointed the assistant judges, labor groups have suggested that they were Uribe loyalists.

¶9. (SBU) Rhett Doumitt and Carlos Guarnizo of the AFL-CIO affiliated Solidarity Center in Colombia have criticized the court's failure to consider the full body of constitutional law in its ruling. The court only invoked articles upholding the GOC's position, while ignoring others that contradicted it, Doumitt and Guarnizo suggested. For example, Articles 53 and 93 of the Constitution provide that "ratified international agreements concerning employment form part of domestic legislation," and that "ratified treaties and agreements recognizing human rights and prohibiting their limitation in states of emergency shall prevail over domestic law." As such, the Solidarity Center argues that a responsible analysis demands mention of ILO Conventions 98, 151, and 154 (all ratified by Colombia), which guarantee the rights of all workers, including in the public sector, to bargain collectively and strike.

¶10. (SBU) Reconciling domestic labor laws with ILO Conventions is a hotly-debated topic centering on rival interpretations of the ILO's definition of "essential public services." The ILO defines essential public services as those whose interruption would "endanger the life, personal safety or health of a whole or part of the population," which provides a rationale for prohibiting strikes. The GOC interprets this loosely to mean most, if not all, public services, preserving what it calls Colombia's "sovereign right" to consider the matter on a sector-by-sector basis. The result is a near-complete prohibition on collective bargaining and strikes among public sector workers, according to National Union School Director Jose Luciano Sanin. As such, labor groups advocate a more sophisticated interpretation on the premise that essential public services can still be rendered during a strike. For example, hospital administrators should be allowed to strike if doctors continue to provide essential medical services. Vice Minister of Labor Ricardo Andres Echeverri said the GOC is refining its definition of essential public services, but that it was complicated and would take time.

ASONAL WILL APPEAL TO INTERNATIONAL INSTITUTIONS

¶11. (SBU) Hernandez confirmed that ASONAL will appeal the court ruling to the ILO, and consider taking the matter before the IACHR. Still, he acknowledged that the process would take years. In the interim, ASONAL will continue to press its demands through the so-called "mesa de concertacion" (coordination roundtable) created by Presidential Decree 535 in February, 2009. The decree guarantees public sector workers an audience for their grievances to appease public sector labor groups who complained that their employers refused to even meet with them. Labor groups told us, however, that the mechanism lacks teeth because it does not obligate employers to actually negotiate.
NICHOLS